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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking into the
Review of the California High Cost
Fund-A Program. R.11-11-007

**OPENING COMMENTS OF
CALAVERAS TELEPHONE COMPANY (U 1004 C)
CAL-ORE TELEPHONE CO. (U 1006 C)
DUCOR TELEPHONE COMPANY (U 1007 C)
FORESTHILL TELEPHONE CO. (U 1009 C)
KERMAN TELEPHONE CO. (U 1012 C)
PINNACLES TELEPHONE CO. (U 1013 C)
THE PONDEROSA TELEPHONE CO. (U 1014 C)
SIERRA TELEPHONE COMPANY, INC. (U 1016 C)
THE SISKIYOU TELEPHONE COMPANY (U 1017 C) AND
VOLCANO TELEPHONE COMPANY (U 1019 C)
("INDEPENDENT SMALL LECS")**

**ON THE ADMINISTRATIVE LAW JUDGES' RULING SEEKING COMMENT ON
GENERAL GUIDELINES FOR ALLOWING WIRELINE COMPETITION IN AREAS
SERVED THE SMALL LOCAL EXCHANGE CARRIERS**

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1 **I. INTRODUCTION.**

2 Pursuant to the November 8, 2019 Administrative Law Judges’ Ruling Seeking Comment
3 on General Guidelines for Allowing Wireline Competition in Areas Served by Small Local
4 Exchange Carriers (the “November 8, 2019 Ruling”), as modified by the November 18, 2019
5 email ruling revising the filing deadlines for these comments,¹ the Independent Small LECs²
6 hereby provide opening comments on potential regulatory requirements that should apply to
7 Competitive Local Exchange Carriers (“CLECs”) who may be granted authority to compete in
8 Independent Small LEC territories. The Independent Small LECs provide their overall views
9 regarding the subject of the November 8, 2019 Ruling and address each question posed therein.

10 In submitting these comments, the Independent Small LECs do not concede that any
11 CLEC should be granted authority to compete in an Independent Small LEC territory, and the
12 Independent Small LECs maintain their position that the categorical prohibition on CLEC
13 competition in these areas should remain. Likewise, the Independent Small LECs do not agree
14 that individual CLEC applications are the appropriate place to address competitive entry by
15 CLECs. No party to this proceeding has presented facts that would be sufficient to reverse the
16 Commission’s longstanding policy of restricting CLEC competition in Independent Small LEC
17 territories, nor has any evidentiary hearing taken place that would permit the Commission to lift
18 the restriction on competition imposed in the Phase 1 Decision, D.14-12-084.³ See D.14-12-084,
19 at 45. Similarly, shifting the debate to individual CLEC applications will not change the

20
21 ¹ On November 18, 2019, Administrative Law Judge (“ALJ”) McKenzie granted an extension on the
22 timeline for submission of opening comments, moving the deadline to January 6, 2020.

23 ² The Independent Small LECs are the following carriers, each of whom is a small, rate-of-return regulated
24 telephone company serving rural and remote areas of California: Calaveras Telephone Company (U 1004
25 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co.
26 (U 1009 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa
27 Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone
28 Company (U 1017 C), and Volcano Telephone Company (U 1019 C).

³ As noted in previous comments on this subject, it is unlawful for the Commission to reverse a policy
reached following evidentiary hearings without holding new evidentiary hearings. See Pub. Util. Code §
1708; *California Trucking Ass'n v. Pub. Util. Comm'n*, 19 Cal.3d 240, 245 (1997); see also *S. California
Edison Co. v. Pub. Util. Comm'n*, 101 Cal.App.4th 982, 994 (2002) (a Commission decision adopted
through evidentiary hearings cannot be modified without hearings). Such a hearing was held in this
proceeding, and the appropriate place to address modifications to the Phase 1 Decision is Phase 2 of the
same proceeding.

1 fundamental policy problems with permitting CLEC competition in Independent Small LEC
2 territories; such a policy is likely to weaken existing Carrier of Last Resort (“COLR”) protections
3 and encourage “creamskimming,” to the detriment of consumers.

4 Notwithstanding these enduring concerns, if the Commission does permit CLECs to seek
5 authority to serve in Independent Small LEC territories, the Commission should adopt specific
6 rules for such CLECs that help ensure regulatory parity and avoid consumer harms that are likely
7 to be created by CLEC competitive entry. In particular, the Commission should require a CLEC
8 who seeks to compete in an Independent Small LEC territory to: (1) provide voice service to the
9 entirety of any exchange in which they seek to serve a customer; (2) fulfill all reasonable requests
10 for broadband-capable connections at levels that meet or exceed the Federal Communications
11 Commission’s minimum broadband speeds, currently set at 25 Megabits per second (“Mbps”)
12 download and 3 Mbps upload; (3) submit annual reports, specific to any Independent Small LEC
13 exchanges that the CLEC serves, that parallel the requirements for Independent Small LECs,
14 including annual “Form M” submissions, General Order (“G.O.”) 133-D reports, G.O. 77 reports,
15 and any other reports required of Independent Small LECs with which the CLEC competes; (4)
16 submit two-year service improvements plans and deployment “progress reports” that parallel the
17 requirements imposed in the Eligible Telecommunications Carrier (“ETC”) submissions and rate
18 cases for Independent Small LECs with which the CLEC seeks to compete; (5) abide by all
19 affiliate transactions and cost allocation restrictions imposed on the Independent Small LECs with
20 which the CLEC seeks to compete, including any requirements created in rate cases or in this
21 proceeding; and (6) comply with all disaster relief, emergency response, and safety regulations
22 applicable to Independent Small LECs with which the CLEC seeks to compete. These
23 precautions, at a minimum, will avoid destabilizing disparities in regulatory requirements between
24 Independent Small LECs and potential CLEC competitors, and they will ensure that the
25 Commission has enough information to track the consequences of its policy decision to open up
26 these areas to competition, should it make such a decision.

27 The Independent Small LECs reserve the right to supplement these recommendations upon
28 reviewing other parties’ comments. In addition, if major ratemaking changes are implemented in

1 Phase 2 of this proceeding, such as “broadband imputation,” further expansions of competing
2 CLEC requirements may be appropriate.

3 **II. EVIDENTIARY HEARINGS ARE REQUIRED BEFORE REVERSING THE**
4 **PROHIBITION ON CLEC COMPETITION ADOPTED IN PHASE 1, EVEN IF**
5 **THE COMMISSION ANALYZES COMPETITION ON A CASE-BY-CASE BASIS.**

6 Even if the Commission considers potential CLEC competition on a case-by-case basis,
7 evidentiary hearings are required before the Commission can modify or reverse its Phase 1
8 conclusions on the issue of allowing CLEC competition. As a matter of law, where the
9 Commission holds hearings and reaches a conclusion, that conclusion cannot be reversed without
10 holding further hearings.⁴

11 In Phase 1 of this proceeding, the Commission held several days of evidentiary hearings
12 and heard from numerous witnesses. This process resulted in a conclusion that “Small Incumbent
13 Local Exchange Carrier[s]’ territories will not be opened to wireline competition at this time.”
14 D.14-12-084 at 100 (O.P. 1), 101 (O.P. 5). Any action to open an Independent Small LEC
15 territory to competition would reverse this conclusion, but under Public Utilities Code Section
16 1708, this cannot occur without holding additional evidentiary hearings. Indeed, before the
17 Commission may “rescind, alter or amend any order or decision,” Public Utilities Code Section
18 1708 requires that parties be given “an opportunity to be heard as in the case of complaints.” This
19 “opportunity to be heard” must include “a hearing at which parties are entitled to be heard and to
20 introduce evidence, and the Commission must issue process and enforce the attendance of
21 witnesses.”

22 Due process principles mandate the same procedural prerequisite, as the Independent Small
23 LEC have a right to be heard “at a meaningful time and in a meaningful manner” when confronted
24 with the risk of a “serious loss” of “liberty” or “property.”⁵ The introduction of new competition
25 could compromise revenue streams and deprive the companies of an established procedural right,

26 ⁴ See Pub. Util. Code § 1708; *California Trucking Ass'n v. Pub. Util. Comm'n*, 19 Cal.3d 240, 245 (1997);
27 see also *S. California Edison Co. v. Pub. Util. Comm'n*, 101 Cal.App.4th 982, 994 (2002) (a Commission
28 decision adopted through evidentiary hearings cannot be modified without hearings).

⁵ *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970) (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965));
Mathews v. Eldridge, 424 U.S. 319, 348 (1976); *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972).

1 causing them to suffer a "serious loss." These potential losses are no different whether they occur
2 in an industry-wide rulemaking or in carrier-specific proceedings.

3 **III. THE COMMISSION SHOULD IMPOSE SUFFICIENT REPORTING**
4 **REQUIREMENTS TO ENSURE THAT THE EFFECTS OF COMPETITION CAN**
5 **BE MEASURED AND TO AVOID CREATING REGULATORY ADVANTAGES**
6 **FOR CLECS OVER THE INCUMBENT PROVIDERS.**

7 As the Independent Small LECs have explained, there are many compelling policy reasons
8 not to open rural telephone company service territories to CLEC competition. *See* R.11-11-007
9 (Phase 1), *Opening Brief of Independent Small LECs*, at 54-66. A shift in Commission policy has
10 the potential to invite "creamskimming" and impair the safety net that rural customers derive from
11 the safe, reliable service provided by the Independent Small LECs, who serve as COLRs
12 throughout their service territories. Even if the Commission is not persuaded by these concerns to
13 maintain the current policy, it should impose reasonable regulatory requirements and tracking
14 mechanisms to mitigate these potential harms and be sure that the Commission is aware of
15 problems created by potential CLEC competition.

16 There are many differences between CLECs and the Independent Small LECs that warrant
17 heightened scrutiny of any competition that is authorized in Independent Small LEC territories.
18 Most CLECs have resources that far exceed those of the Independent Small LECs, and they have
19 no obligations to serve as COLRs or fulfill requests for service from the most vulnerable rural
20 customers — CLECs can pick and choose who they serve, what populations they serve, and the
21 extent to which they will serve those populations. CLECs also operate under a far less restrictive
22 regulatory framework, which permits them full pricing flexibility and relieves them of many
23 reporting requirements that the Independent Small LECs must fulfill. Taken together, these
24 dynamics create significant risks that CLECs will "cherry-pick" the high-revenue, low-cost
25 business customers or more lucrative subdivisions, leaving the underlying COLR to serve the low-
26 income, high-cost, and most remote populations. Likewise, the regulatory disparities between
27 CLECs and the Independent Small LECs create material risks that CLECs will leverage their more
28 flexible regulatory platform to achieve results that the Independent Small LECs cannot replicate.

To protect against potential problems for rural consumers, the Commission should modify

1 the CLEC rules for any CLEC who seeks to compete in an Independent Small LEC territory. The
2 modified rules should include enhanced reporting requirements reflecting financial results,
3 deployment of broadband-capable facilities, and service quality metrics that are specific to the
4 Independent Small LECs’ rural exchanges in which the CLEC has chosen to serve. The
5 Commission should also take steps to mitigate the regulatory disparities between Independent
6 Small LECs and any competing CLECs, which should include imposing additional service
7 commitments on CLECs to the extent — and only to the extent — that they serve in Independent
8 Small LEC territories. As set forth below, specific changes to current CLEC regulatory
9 requirements would be important if the Commission permits CLECs to compete in these areas.

10 **IV. RESPONSES TO SPECIFIC QUESTIONS IN NOVEMBER 8, 2019 RULING.**

11 The November 8, 2019 Ruling poses seven specific questions. The Independent Small
12 LECs address each as follows:

- 13 **1. What, if any, conditions are appropriate for the Commission to consider**
14 **imposing on both CLECs and small LECs in the small LEC service areas**
15 **under Section 253(b) of the Federal Telecommunications Act of 1996?**
Specifically, please consider conditions related to:
 - 16 **a. Requirements necessary to preserve and advance universal service;**
 - 17 **b. Protecting the public safety and welfare;**
 - 18 **c. Ensuring the continued quality of telecommunications services; and**
 - 19 **d. Safeguarding the rights of consumers.**

20 The Independent Small LECs agree that the Commission’s consideration of CLEC
21 competition in rural telephone company areas should focus on how to “protect the public safety
22 and welfare,” “preserve and advance universal service,” “ensur[e] . . . continued quality of
23 telecommunications services,” and “safeguard the rights of consumers.” With these goals in mind,
24 there are several important conditions that the Commission should impose on CLECs to the extent
25 that they operate in Independent Small LEC territories. Each of these mandates, and many others,
26 apply to the Independent Small LECs, so these requirements would be the minimum reasonable
27 conditions to be included in any Certificate of Public Convenience and Necessity (“CPCN”) that is
28 issued to authorize CLEC service in an Independent Small LEC territory. Additional requirements
may be appropriate based on the facts presented in an individual CLEC application. The
minimum requirements should be as follows:

1 (1) *Voice service requirements throughout each exchange served:* Competing CLECs
2 should be required to provide voice-grade service, including all elements of basic residential and
3 single-line business service, throughout each exchange in which they choose to pursue customers.
4 *See* D.12-12-038, Appendix A. As COLRs, the Independent Small LECs must meet this standard
5 throughout their entire study areas, but competing CLECs should, at a minimum, have to fulfill
6 this requirement in each exchange where they choose to serve. This would reduce the potential for
7 creamskimming, at least within each exchange.

8 (2) *Requirements to fulfill all reasonable requests for broadband-capable connections at*
9 *the FCC-defined broadband standards within each served exchange:* Like the Independent Small
10 LECs, competing CLECs should be required to fulfill all reasonable requests for broadband-
11 capable connections at levels that meet the FCC’s evolving broadband standards, which include
12 speed capabilities of 25/3 Mbps and latency “suitable for real-time applications.” 47 C.F.R. §
13 54.313(f); *In the Matter of Connect America Fund*, WC Docket No. 10-90, *Report and Order*,
14 FCC 18-176 (rel. Dec. 13, 2018) at ¶ 3. Like the basic service commitment described above, this
15 requirement should apply throughout any Independent Small LEC exchange in which a CLEC
16 seeks to serve.

17 (3) *Annual reporting requirements that parallel Independent Small LEC requirements:* If
18 CLECs wish to compete in Independent Small LEC territories, they should have the same
19 informational and disclosure requirements as the Independent Small LECs so that the Commission
20 can track the competitive dynamics and consumer impacts in the affected areas. Currently,
21 CLECs are subject to more limited reporting under G.O. 104-A, but, if they compete in
22 Independent Small LEC territories, they should be required to submit the more extensive financial
23 documentation in the “Form M” format that the Independent Small LECs utilize. This information
24 should be tailored to the rural service territories in which the CLECs seek to compete so that the
25 Commission can compare financial results between the CLEC competitors and the underlying
26 COLRs. This will allow the Commission to detect potential concerns so that remedial measures
27 could be pursued. G.O. 133-D service quality reports should also be brought into parity such that
28 a competing CLEC should be required to submit all aspects of G.O. 133-D reports that the

1 underlying COLR submits. Currently, certain aspects of G.O. 133-D apply to “GRC-ILECs,” a
2 term which includes each of the Independent Small LECs. *See* G.O. 133-D, §§ 3.1 (Installation
3 Interval), 3.2 (Installation Commitments). Each of these sections should be expanded to include
4 CLECs who seek to serve in these same areas so that the Commission can exercise similar
5 oversight over service quality in these areas. The same should be true of G.O. 77 reports, which
6 provide basic executive compensation, employee compensation, charitable contribution, and
7 similar information. CLECs are currently exempt from G.O. 77 requirements, but they should not
8 be exempt insofar as they seek to serve in Independent Small LEC territories.

9 (4) *Service quality improvement plans and deployment progress reports specific to the*
10 *exchanges served:* Continued broadband deployment is critical in the rural areas that the
11 Independent Small LECs serve, and the Independent Small LECs are subject to extensive
12 reporting requirements in connection with their facilities deployment. CLECs who seek to serve
13 these areas should follow parallel requirements. In particular, competing CLECs should submit
14 two-year service quality improvement plans on an annual basis, including the same elements as
15 the reports mandated in the Independent Small LECs’ ETC filings. While the Independent Small
16 LECs are not suggesting that CLECs be required to be ETCs prior to competing in rural telephone
17 company service territories, the Commission could consider that as a requirement. At a minimum,
18 the two-year service quality improvement plan should be submitted. *See* Res. T-17002, Appendix
19 B, § II. This will help ensure that CLECs are not just engaged in opportunistic “cherry-picking,”
20 but are actually contributing to the long-term infrastructure deployment of the areas in which they
21 seek to compete.

22 (5) *Affiliate transaction and cost allocation requirements:* To avoid creating competitive
23 disparities between competing CLECs and Independent Small LECs, CLECs should be required to
24 follow the same affiliate transaction requirements and cost allocation requirements that are
25 applicable to the Independent Small LECs. For example, Kerman and Foresthill are prohibited
26 from engaging in “joint advertising or marketing” with affiliates and they cannot have “joint
27 events” or collectively provide “sponsorships, fundraisers, or charitable donations” with affiliates.
28 *See* D.16-06-053, at 87; D.19-04-017 at 39-40. Any competing CLEC should be bound by these

1 same restrictions. Similarly, Independent Small LECs must follow 47 C.F.R. Section 64.901 as to
2 their cost assignments and common cost allocations, and competing CLECs should be required to
3 follow the same requirements. Adopting these requirements will encourage regulatory parity and
4 allow the Commission to conduct an “apples to apples” evaluation of the financial consequences
5 of any expansion of CLEC authorities to include Independent Small LEC territories.

6 (6) *Compliance with all disaster relief, emergency response, and safety requirements:* If
7 competing CLECs seek to replace Independent Small LECs as the service providers as to at least
8 some customers in these rural exchanges, the Commission should ensure that such a substitution is
9 not at the expense of public safety. Any disaster relief, emergency response, and safety
10 requirements that apply to the underlying COLR in an area that the competing CLEC wishes to
11 serve should be applied to the competing CLEC. For example, Ducor was required in its last rate
12 case to establish “Mutual Aid Agreements,” with “emergency responders and local organizations.”
13 D.19-06-025, at 31. Similarly, Foresthill was required to perform additional emergency training
14 exercises and document all testing and maintenance of equipment used in emergencies. D.19-04-
15 017, at 79. Whether safety regulations are the product of a generic proceeding, this proceeding, or
16 a rate case proceeding specific to a given Independent Small LEC, any CLEC seeking to serve in
17 an Independent Small LEC exchange should abide by the same safety regulations applicable in
18 that area.

19 CLECs seeking to serve in Independent Small LEC service territories should at least abide
20 by these minimum requirements. However, if a case-by-case approach is utilized to evaluate
21 CLEC entry in Independent Small LEC territories, the Commission should evaluate the specific
22 needs of the affected communities and consider whether, based on the factual record developed in
23 such a proceeding, CLEC competition should be permitted. If it is permitted, the record in each
24 proceeding should determine whether to impose additional requirements beyond the minimum
25 requirements identified above.

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1 **2. What impact will CLEC competition have on the small LEC COLR**
2 **responsibilities? What, if any, conditions should the Commission impose on**
3 **the CLECs to prevent potential negative impact? For example, should the**
4 **CLECs in the small LEC service areas provide COLR protections in order to**
5 **compete?**

6 If allowed to enter Independent Small LEC territories, CLECs are likely to engage in
7 “creamskimming,” in which a carrier targets the high-revenue customers while ignoring other
8 customers in the territory for whom it is not as profitable to provide service. By removing the
9 most profitable customers, creamskimming drains the revenue available to the existing COLRs,
10 making them even less profitable. In between rate cases, there is no way for Independent Small
11 LECs to address such revenue shortfalls, and the annual CHCF-A process provides no annual
12 adjustment mechanism to increase CHCF-A for competitive losses. *See* D.91-09-042, Appendix.
13 Even in rate cases, adjustments to CHCF-A can only be made going forward, so CLEC
14 competition is likely to harm Independent Small LECs’ revenue streams, making it more difficult
15 for them to fulfill their duties as COLRs. Moreover, to the extent that CHCF-A support is
16 increased to address competitive losses, this would have the effect of taking money from the
17 CHCF-A fund and handing it over to CLECs who have no intention of acting as COLRs.

18 CLEC competition focused on “creamskimming” is neither beneficial to the vast majority
19 of rural customers nor to the general public across the state, who would likely have to provide
20 additional support to the CHCF-A to support the remaining customers who are not targets of a
21 typical CLEC business model. CLEC competition is not likely to do anything to preserve or
22 advance universal service, protect the public welfare, ensure the continued quality of
23 telecommunications services for the most vulnerable populations in these territories, nor does it
24 safeguard the rights of the majority of the consumers in these areas. Therefore, from both a
25 practical service perspective and a financial perspective, allowing CLEC competition in COLR
26 territory would be materially harmful.

27 The underlying record in Phase 1 addressed the likelihood of “creamskimming.” As the
28 Independent Small LECs’ expert testified, the CLEC business model is based on having sufficient
29 subscribers to cover the costs of infrastructure investment. *See* R.11-11-007 (Phase 1) Hearing
30 Exhibit 11, Thompson Opening Testimony, at 36. Thus, CLECs focus on providing service to

1 business customers and densely-populated towns that produce higher revenues at lower costs. *See*
2 R.11-11-007 (Phase 1) Hearing Exhibit 11, Thompson Opening Testimony, at 35. Given that they
3 can discriminate in how and where they serve, CLECs are naturally uninterested in serving areas
4 that are unprofitable or that provide significant investment costs in exchange for a low rate-of-
5 return on that investment. CLECs are likely to serve only the most profitable residential areas or
6 select businesses where the return on investment is greater.

7 One reasonable response to cream skimming would be to require that any competing
8 CLECs be both COLRs and ETCs. However, at a minimum, the Commission should require
9 CLECs to commit to fulfilling all reasonable requests for voice and broadband-capable facilities at
10 the exchange level. As discussed in detail in response to Question 1, the Commission should
11 avoid institutionalizing competitive advantages in favor of CLECs by permitting them to operate
12 in Independent Small LEC territories under a far less restrictive set of rules.

13 **3. What, if any, conditions are appropriate for the Commission to consider**
14 **imposing on CLECs that would allow the small LECs to continue providing**
15 **high quality and affordable service and to protect their customers from loss or**
16 **degradation of service quality when faced with revenue losses from CLEC**
17 **competition?**

18 The Independent Small LECs agree that the Commission should be concerned about the
19 effects of CLEC competition on the continued provision of high-quality and affordable service in
20 the rural service territories served by the Independent Small LECs. In response to Question 1,
21 above, the Independent Small LECs identified a series of conditions that represent the minimum
22 requirements that should be imposed on CLECs if the Commission makes the decision to permit
23 CLEC competition. Each of these conditions will promote regulatory parity and Commission
24 oversight, and reduce the possibility that major negative impacts to service quality could occur as
25 a consequence of competition.

26 In addition to the requirements discussed above, the Commission should take steps to
27 ensure that Independent Small LECs have a reasonable opportunity to respond to pricing offered
28 by competitors. CLECs should not be able to gain a competitive advantage by flexibly pricing
their services, while Independent Small LECs have no ability to respond because of their tariffing
requirements. To address these disparities, competing CLECs should be required to provide at

1 least 60-days advance notice of any pricing changes, through an informational advice letter that is
2 filed with the Commission and any COLR in the area where the pricing will be available. The
3 Commission should authorize Independent Small LECs to offer pricing that parallels the CLEC's
4 pricing through promotional tariff offerings. Such promotions constitute alternatives to the pricing
5 in a company's tariff, and they should be available for as long as the competing CLEC's pricing is
6 in place. Promotional tariff filings should be permitted through Tier 2 advice letters, upon 30 days
7 advance notice to customers. Creating this notice and an opportunity for Independent Small LECs
8 to competitively respond would be an important element of any regulatory platform in which
9 CLECs are permitted to compete in Independent Small LEC territories.

10 Beyond the proposals in response to Question 1, and the notice and promotional pricing
11 proposal described above, a critical element of avoiding "loss or degradation of service quality" is
12 to ensure that sufficient CHCF-A is available to support Independent Small LEC operations even
13 if revenues are lost to CLEC "cherry-picking." If it permits competition by CLECs in these areas,
14 the Commission should renew its commitment to rate case reform and permit streamlined advice
15 letter processes to be utilized instead of the current, cumbersome formal process. The
16 Commission should also resist attempts by Cal PA to institute additional rate increases on rural
17 consumers, which only make services less affordable and impair Independent Small LECs'
18 abilities to compete with potential CLECs.

19 Likewise, the Commission should resist arbitrary proposals to reduce the CHCF-A, such as
20 the imposition of operating expense caps, disallowance of rate case expense, broadband
21 imputation, and arbitrary reductions based on broadband subscribership. In this sense, the
22 competition issue cannot be divorced from the other issues in Phase 2 of the proceeding, which
23 almost uniformly are designed to harm Independent Small LECs and reduce the CHCF-A without
24 benefit to rural ratepayers. Permitting competition and cutting funding for Independent Small
25 LECs will compound the risks associated with these misguided policies.

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1 **4. What would be the short-term and long-term impacts of allowing CLEC**
2 **competition in small LEC territories? How could these be mitigated?**

3 As discussed in response to Question 2, since the Independent Small LECs are COLRs, the
4 short and long-term effects of allowing CLECs to enter the Independent Small LECs' service
5 territory would be to harm the financial viability of the Independent Small LECs, increased draws
6 on the CHCF-A, and potentially harm the most vulnerable customers in the Independent Small
7 LECs who will be ignored by the CLECs since they are low-income, high-cost, remote population.
8 While no “mitigation” measures would fully address the problems posed by CLEC competition,
9 the requirements proposed in response to Question 1 should be adopted as minimum requirements
10 for any CLEC that seeks to serve in an Independent Small LEC territory.

11 **5. For each individual small LEC service territory, what area and fact specific**
12 **data should the Commission consider in evaluating competitive entry?**

13 If the Commission does not retain its current categorical prohibition on CLEC competition
14 in Independent Small LEC territories, it should ensure that the individual characteristics and
15 dynamics of specific communities are considered in any case-by-case applications in which
16 competition is proposed. In potential CPCN expansion proceedings, it will be critical to determine
17 whether a CLEC’s business plan will promote “creamskimming.” Specific information should be
18 required in the proceeding as to where specifically the CLEC intends to serve and the
19 demographic and socio-economic characteristics of that area. These considerations should include
20 whether the CLEC will serve low-income areas in the service territory with significant LifeLine-
21 eligible customers, whether they will serve Tribal areas, and whether they will serve areas that are
22 physically isolated or separated from population centers where essential social, economic, and
23 health services can be found. CPCN applications in Independent Small LEC territories should
24 also be required to include specific demonstrations of the benefits that the competing carrier
25 perceives would be conferred by granting the application. In addition, the Commission should
26 consider whether any new facilities will be installed and whether the competing carrier intends to
27 serve customers over a platform that is subject to Commission jurisdiction. Ultimately, both the
28 potential competitor and the Independent Small LEC should be free to present all facts they

1 believe would bear upon the public interest analysis and cost-benefit analysis that the Commission
2 should conduct before concluding that CLEC competition is permitted.

3 **6. Considering the potential impacts of CLEC competition, should the**
4 **Commission consider changing the California High Cost Fund-A framework?**
5 **Specifically, what adjustments, if any, to the ratesetting process and A-Fund**
6 **regulatory framework could ensure customers in these areas continue to**
7 **receive affordable and reliable services?**

8 Within the boundaries of the statutory authority, which is defined by Public Utilities Code
9 Section 275.6, there are important steps that the Commission should take to improve its
10 ratemaking processes in response to potential CLEC competition. Promoting regulatory parity and
11 avoiding current unreasonable burdens on Independent Small LECs in the ratemaking process
12 would be particularly important if competitors are present. If Independent Small LECs must
13 operate with enhanced competition and an unreasonably cumbersome ratemaking process,
14 affordable and reliable service could be threatened.

15 Most importantly, the rate case process is in dire need of reform, and it should be replaced
16 with an informal advice letter process, similar to the process that was utilized successfully for
17 more than two decades for Independent Small LECs.⁶ The Commission currently permits advice
18 letter filings for Class B and Class C water companies, which are of similar size to the
19 Independent Small LECs.⁷ Further, as discussed in response to Question 3 above, additional
20 flexibility in changing rates should be provided through promotional tariffs. Moreover, current
21 restrictions on bundling should be relaxed to allow tariffed carriers to deviate from their tariffs to
22 respond to competitive offerings through bundles.

23 Radical changes to the CHCF-A should not be considered, nor are they possible given the
24 requirements of Public Utilities Code Section 275.6. The Commission must continue to employ
25 “rate of return” regulation, as described in that Legislative mandate, but it has the discretion to
26 make its processes less punitive and less expensive, and the threat of additional competition only

27 ⁶ See Res. T-16720; Res. T-16697; Res. T-16707; Res. T-16711; Res. T-16756; Res. T-16762; Res. T-
28 16764; Res. T-16755; Res. T-16771; Res. T-16968; Res. T-17048; Res. T-17082; Res. T-17081; Res. T-
17108; Res. T-17158; Res. T-17157; Res. T-17184; Res. T-17133; Res. T-17132.

⁷ See G.O. 96-B, Water Industry Rules, Rule 1.7.

1 enhances the need to pursue such reforms.

- 2 **7. Appendices A and B to D.95-07-054 set forth rules that the Commission**
3 **adopted for CLEC competition in the territories of respondents in that**
4 **proceeding. Should the Commission consider developing comparable rules for**
5 **CLECs wishing to compete in small LEC service territories? Are additional**
6 **consumer protections necessary requiring revision to Appendix B? In the**
7 **alternative, should the Commission consider revising or updating the local**
8 **competition CLEC rules in Appendices A and B to D.95-07-054, and apply**
9 **those to all CLECs operating in the state?**

10 This proceeding should not be a platform to reevaluate the CLEC rules generally. If the
11 Commission were interested in such reform, the appropriate course would be to properly notice a
12 proceeding for that purpose and notify all affected carriers.⁸ Such a broad exercise is not needed,
13 however, as the focus of this proceeding is on rural consumers and communities currently served
14 by the Independent Small LECs. Any rules developed in this proceeding should apply only to
15 CLECs who seek to compete in Independent Small LEC territories, and only to the extent of such
16 competition, if it is authorized.

17 The 1995 CLEC rules are not a reasonable starting point for considering the regulatory
18 requirements that would be appropriate in rural service territories. As discussed in response to
19 Question 1, the Commission should strive to identify the type of oversight that will be needed to
20 avoid the specific harms that CLECs pose to rural consumers in Independent Small LEC areas.
21 Similarly, the Commission should take steps to avoid regulatory disparities that could leverage
22 CLEC platforms over more restrictive rural ILEC requirements. The specific proposals provided
23 in response to Question 1 should be the cornerstone of any rules that apply to competing CLECs in
24 Independent Small LEC territories, in addition to the standard rules that apply to CLECs.

25 The 1995 CLEC rules are outdated because they do not account for the numerous
26 developments since that time. Creating a modified set of CLEC rules would be a significant
27 undertaking that is beyond the scope of this proceeding. The Commission should focus instead on
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⁸ The 1995 CLEC rules are also outdated, and would not necessarily be an appropriate starting point for a consideration of reforms to the terms of service by which CLECs operate. A review of this sort would have to consider all developments since D.95-07-054, including the impacts of the Uniform Regulatory Framework (“URF”) proceeding, which was designed to move CLECs and the large URF ILECs toward greater regulatory parity.

